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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

10
11 THE GUARDIAN LIFE INSURANCE
12 COMPANY OF AMERICA, a New York
mutual insurance company,

13 Plaintiff,

14 vs.

15
16 DONALD ZENI SUPPLEMENTAL NEEDS
TRUST AND PAMELA FOCAZIO,
17 TRUSTEE OF DONALD ZENI
SUPPLEMENTAL NEEDS TRUST;
18 ANDREW M. ZENI, an individual; MONICA
MORO, an individual; and SHARON K. ZENI,
19 an individual,

20 Defendants.

CASE NO.: 2:12-cv-00753-GMN-GWF

**STIPULATION AND REQUEST FOR
ORDER FOR JUDGMENT ON BEHALF
OF PLAINTIFF GUARDIAN LIFE
INSURANCE COMPANY OF
AMERICA**

21
22 The parties in the above-captioned matter, by and through their respective counsel of
23 record, hereby stipulate and request that the Court enter the following Order for Judgment
24 regarding Plaintiff, the Guardian Life Insurance Company of America. The Order sought by the
25 parties is based upon the following stipulated facts.

26 1. This is an action for interpleader under 28 U.S.C. §1335 and Rule 22 of the Federal
27 Rules of Civil Procedure.
28

1 2. Plaintiff, The Guardian, is a mutual insurance company organized under the laws of
2 the State of New York, with its principal place of business in the State of New York. It is duly
3 licensed to do business in the State of Nevada. Defendants are of diverse citizenship.

4 3. The Court has original jurisdiction over this action pursuant to 28 U.S.C. §1335
5 because this is an interpleader action in which two or more adverse claimants of diverse
6 citizenship, as defined in 28 U.S.C. §1332, have claimed to be entitled to more than \$500 in money
7 or property which Plaintiff possesses. Defendants acknowledge formal notice and service and
8 acknowledge that the Court has personal jurisdiction. All parties waive any right to a trial by jury.

9 4. Donald Ray Zeni ("Decedent") died on October 13, 2011.

10 5. Prior to his death, Decedent owned three life insurance policies issued by The
11 Guardian, Policy number 2640614, Policy number 2751979 and Policy number 3249736 (the
12 "Policies").

13 6. The Policies established the right of Decedent to name his or her beneficiary or
14 beneficiaries and stated that benefits would be paid to the designated beneficiary or beneficiaries.
15 The Guardian is responsible for making claim determinations under the policies.

16 7. The amount of death benefits ("Policy Benefits") plus interest available for the
17 beneficiary or beneficiaries of Donald Ray Zeni are: \$82,253.00 plus interest of \$1,830.13 under
18 Policy number 2640614; \$56,482.10 plus interest of \$1,256.73 under Policy number 2751979; and
19 \$58,758.57 plus interest of \$1,307.38 under Policy number 3249736. Policy Benefits plus interest
20 thus total \$201,887.91.

21 8. Defendants have made conflicting claims for said benefits.

22 9. The Guardian is ready and willing to deposit the Plan Benefits along with interest in
23 the amount of \$201,887.91 into the Court's registry.

24 10. By reason of the disputed claims herein and the need for The Guardian to file this
25 interpleader action, the parties stipulate and agree that The Guardian is entitled to reimbursement
26 of its reasonable attorney fees, court costs, and expenses in the amount of \$8,000.00. The parties
27 further stipulate and agree that this amount is payable from the Policy Benefits.

11. The parties stipulate and agree that the attorney fees, costs and expenses will be deducted from the Policy Benefits prior to being deposited into the Court's registry, so that a net amount of \$193,887.91 will be deposited with the Clerk of this Court within 30 days of the Court's entry of final order and judgment in this interpleader matter.

12. The parties stipulate and agree that by depositing the sum of \$193,887.91 with the Clerk, The Guardian is discharged from further liability on account of the death of Donald Ray Zeni and the defendants will be enjoined from pursuing any further claims against The Guardian on account of the death of Donald Ray Zeni.

IT IS THEREFORE REQUESTED that the Court issue an Order adjudging and decreeing as follows:

1. The Guardian Life Insurance Company shall deposit the sum of \$193,887.91 into the Court's registry within 30 days after entry of this Order and Judgment, which includes \$201,887.91 in Plan Benefits plus interest, minus \$8,000.00 in attorney fees, costs and expenses; and

2. The Guardian Life Insurance Company of America, a mutual insurance company, is hereby discharged from any and all further liability whatsoever under the aforesaid policies of insurance and that the Clerk shall enter judgment in favor of The Guardian Life Insurance Company of America on its Complaint for Interpleader and against defendants, Donald Zeni Supplemental Needs Trust and Pamela Focazio, trustee of Donald Zeni Supplemental Needs Trust, Andrew M. Zeni, Monica Moro and Sharon K. Zeni; and

3. Defendants Donald Zeni Supplemental Needs Trust and Pamela Focazio, trustee of Donald Zeni Supplemental Needs Trust, Andrew M. Zeni, Monica Moro and Sharon K. Zeni are perpetually enjoined and restrained from making any further claim against The Guardian Life Insurance Company of America on account of the death of Donald Ray Zeni and that each of them is hereby restrained from instituting and/or further prosecuting any action against The Guardian Life Insurance Company of America on account of the death of Donald Ray Zeni; and

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4. Pursuant to Fed.R.Civ.P. 54(b), the Court finds that there is no just reason for delay and hereby directs the Clerk to enter final judgment in favor of Plaintiff and against Defendants in accordance with the above.

Dated this 29th day of August, 2012

Dated this 30th day of August, 2012

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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/s/ Shaun P. Haley

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Dated this 29th day of August, 2012

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IT IS SO ORDERED:


Gloria M. Navarro
United States District Judge

DATED: 09/04/2012